IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1884 OF 2006

Yogesh @ Sachin Jagdish Joshi ...Petitioner

Vs.

The State of Maharashtra ...Respondent

Shri V.M.Thorat for the Petitioner.

Shri S.R.Shitole, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.
DATE : SEPTEMBER 19, 2006.

JUDGMENT:

1. Heard the submissions of the learned Counsel appearing for the Petitioner. Prayer in this Petition under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 is for quashing the Judgment and Order dated 23rd March, 2005 passed by the learned Sessions Judge, Satara. The prayer is for the discharge of the Petitioner of the charges framed against the Petitioner under section 302 read with section 120-B of the Indian Penal Code in a case pending before Juvenile Justice Board. Surprisingly, this Petition is filed though the order impugned in this Petition has been already confirmed by this Court in Criminal Revision Application No.288 of 2005.

2. This Petition arises out of C.R.No.03 of 2001 filed at Mahabaleshwar Police Station for offence punishable under section 302 read with section 120-B read with section 34 of the Indian Penal Code. The Petitioner alongwith some of his family members are the accused persons. The complainant Devendra Singh Parihar was residing with his wife and his deceased son Kunal at Panchgani. Sometime in March 1999 deceased Kunal organised an entertainment show which was sponsored by the Petitioner's father. At that time deceased Kunal became acquainted with the Petitioner's sister Hema.

3. The acquaintance between deceased Kunal and Hema blossomed. They were desirous of getting married. Both of them apprehended that there would be opposition from their families and therefore, they eloped from the respective houses. A complaint was filed by the Petitioner's father that deceased Kunal had kidnapped his daughter.

4. On 27th June, 2000, Kunal contacted his father and informed him that he was in Guwahati with Petitioner's sister. Thereafter, they were brought to Mumbai. The complainant Devendra Singh and his wife

persuaded Petitioner's sister Hema to return to her parents. In December 2000 the Petitioner's father called the complainant and abused him. Thereafter, threatening calls were allegedly made by the Petitioner, his sister Hema and Petitioner's father to the complainant. According to the complainant, he requested his Advocate to talk to Petitioner's father. The said Advocate had a discussion with the Petitioner's father. He informed the complainant that members of the family of the Petitioner will not call the complainant. It appears that Kunal's marriage was settled with another girl which was scheduled to be held on 30th November, 2001. On 21st April, 2001 Kunal left Panchgani for Mahabaleshwar in his Maruti car. At about 8.30 p.m. on that day, a taxi driver informed the complainant that Kunal was lying in a pool of blood on Mahabaleshwar Road. The complainant rushed to the spot and took his son to the hospital where he was declared to be dead. Initially, F.I.R. was lodged against the unknown persons. On 22nd April, 2001 the complainant came out with the allegation that since Kunal's marriage was arranged with another girl, the Petitioner, his sister Hema, his mother and his father made a conspiracy with co-accused Umesh, Suresh, Bhawarlal Sharma and Captain

Sharma to murder Kunal.

5. The Petitioner filed an Application for anticipatory bail on the ground that his age was less than 18 years. This court granted anticipatory bail in favour of the Petitioner. After completion of investigation, final report was filed before the Juvenile Court. The Petitioner applied for discharge before the Juvenile Justice Board by invoking the provisions of section 227 of the Code of Criminal Procedure, 1973. The said Application came to be rejected. Being aggrieved by the said order, an Appeal was preferred before the Sessions Judge, Satara which has been dismissed by order dated 23rd March, 2005 which alongwith the order of the Juvenile Board are impugned in this Petition.

6. It is pertinent to note that the said two orders were challenged by the Petitioner by filing a Criminal Revision Application No.288 of 2005 in this court. By a detailed judgment dated 23rd June, 2006, this Court (V.M.Kanade, J) rejected the Revision Application on merits. The learned Judge held that chronology of events, the documentary evidence and material on record shows that there is some material

about involvement of the Petitioner in the commission of offence. The learned Judge has referred to threats allegedly given by the Petitioner. The learned Judge referred to an E-mail which was sent by the deceased Kunal which shows that threats were received by him from the Petitioner's family and his relatives. This court confirmed the view taken by the courts below that, prima facie, there was sufficient material on record to show the involvement of the Petitioner.

7. Though the orders which are impugned in this Petition have been confirmed by this Court by order dated 23rd June, 2006, the same orders are impugned in this Petition by placing reliance on the decision of this Court in Criminal Writ Petition No.1283 of 2006 and 1284 of 2006 dated 07th July, 2006. By the said decision the Petitioner's mother Vidya, Petitioner's sister Hema and two other co-accused who were Petitioners in the said Writ Petitions have been discharged from the same case. Against the said accused persons, a case was pending before the Sessions Court on the basis of same C.R.No.03 of 2001.

8. The learned counsel appearing for the Petitioners submitted that by reason of parity now the

Petitioner is entitled to discharge.

9. It is impossible to accept the submission made by the learned counsel for the Petitioner. The order passed by this Court in Criminal Revision Application No.288 of 2005 on 23rd June, 2006 has attained finality as of today and thus, the orders which are impugned in this Petition have also attained finality so far as this court is concerned. Apart from legality, as a matter of propriety, this Petition cannot be entertained.

10. As submissions were made on the basis of order dated 07th July, 2006 passed by this Court (K.R.Vyas, C.J.) in Writ Petition Nos.1283 and 1284 of 2006 filed by other accused, I have gone through the said order. The order in Criminal Revision Application No.288 of 2005 filed by the Petitioner herein was passed on 23rd June, 2006. In the aforesaid Writ Petitions filed by the other accused in the same offence, this court was dealing with question of discharge. It appears from the order dated 07th July, 2006 that there is no reference therein to the said order dated 23rd June, 2006 passed by this Court. It is pertinent to note that the said order dated 23rd June, 2006 was not

noticed by this court while the said two Writ Petitions were being heard and decided. The order dated 23rd June, 2006 passed by this Court was certainly relevant for deciding the Criminal Writ Petition Nos.1283 and 1284 of 2006.

11. There is no merit in the Petition and the same is rejected. A copy of this order be forwarded to the Principal Secretary, Law and Judiciary, Government of Maharashtra. The office of Public Prosecutory will also forwards a copy of this order to the Principal Secretary.

JUDGE